IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1952 OF 2005

Mobin Khan ...Petitioner
Vs.
Smt. Shabnam Mobin Khan & Anr. ...Respondents

Shri. Javeed Hussein for the Petitioner.
Ms M. H. Mhatre, A.P.P. for the Respondents.

CORAM : A. S. OKA, J.
DATE : AUGUST 23, 2005.

P.C.:

1. Heard Advocate appearing for the Petitioner. The challenge is to the order dated 16th February, 2005 passed by the learned Magistrate. The learned Magistrate passed an order under section 125 of the Code of Criminal Procedure, 1973 on 18th June, 2001. By the said order, learned Magistrate directed payment of monthly allowance to the Respondent No.1. As the said order was not complied with, the Respondent No.1 has filed appropriate proceeding before the learned Magistrate. In the said proceeding, an Application was made by the Petitioner contending that the proceedings initiated under section 125 of the said Code were not maintainable. The said Application has been rejected by the learned Magistrate by passing the impugned order.

2. In my view, in recovery proceedings the learned Magistrate could not have considered the question relating to maintainibility of the Application under section 125 of the said Code in the

Court of Magistrate. The Petitioner has not challenged the original order passed on 18th June, 2001 under section 125 of the said Code. Therefore, learned Magistrate was right in rejecting the Application filed by the Petitioner. There is no merit in the Petition and the same is rejected. Rejection of this Petition will not preclude the Petitioner from taking out the appropriate proceedings for challenging the order dated 18th June, 2001 passed on Application under section 125 of the Code of Criminal Procedure, 1973 made by the Respondent No.1. All contentions of the Petitionr in that behalf are expressly kept open.

JUDGE